

With an agency agreement, a manufacturer or wholesaler whose products are sold by numerous distributors in Illinois assumes the responsibility of collecting and remitting Retailers' Occupation Tax on behalf of all sales made by distributors. 86 Ill. Adm. Code 130.550. (This is a GIL.)

July 9, 2003

Dear Xxxxx:

This letter is in response to your letter dated May 16, 2003. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at [www.revenue.state.il.us/Laws/regs/part1200/](http://www.revenue.state.il.us/Laws/regs/part1200/).

In your letter, you have stated and made inquiry as follows:

This firm represents a reputable direct sales company ('Company'), that sells merchandise to independent distributors ('Distributors'), some of whom are located in your state. The Distributors, in turn, generally resell that merchandise to their customers at retail prices.

When a Distributor in your state submits a merchandise order to the Company, the Company charges the Distributor the wholesale price of the ordered merchandise but calculates your state's sales tax based on the retail price. The Company subsequently files returns with your office for the applicable reporting periods and remits the tax amounts received from the Distributors.

The Company has been voluntarily handling sales tax for your state in the manner described above in order to reduce the administrative burdens on the Distributors. However, doing so has produced a significant burden on the Company as to the allocation of the remitted tax among your state's local jurisdictions. That is because the Company cannot determine in advance where the Distributors will resell the merchandise at the retail price upon which tax was charged. The Company would like to eliminate that burden while continuing to handle your state's sales tax collection and remittance for the benefit of the Distributors and your state.

Accordingly, the Company wishes to enter into an agreement with your state that will authorize the Company to continue its practice of voluntarily collecting sales tax from the Distributors in your state but to remit that tax as a lump-sum amount, with any allocation among local jurisdictions to be made by your office. Such an agreement would also relieve the Company of any obligation to file returns in any of your state's

local jurisdictions. If you have a model agreement that is used for this purpose, please forward it to me for review along with the contact information of the person with whom I may discuss it. Alternatively, if you do not have a model agreement, please advise who I may contact to discuss preparation of the necessary documentation.

I look forward to hearing from your office as soon as possible. My mailing address is shown at the top of this letter.

We are unable to enter into the agreement that you request. Enclosed please find a copy of Section 130.550, "Filing of Returns for Retailers by Suppliers Under Certain Circumstances." This regulation sets out the Department's policy governing agency agreements. With an agency agreement, a manufacturer or wholesaler whose products are sold by numerous distributors in Illinois assumes the responsibility of collecting and remitting Retailers' Occupation Tax on behalf of all sales made by distributors. However, if distributors who are affected make written objection to the Department, such distributors may opt out of the agreement and remit their own taxes. The Department utilizes a standard "Agency Agreement" with wholesalers and manufacturers that wish to enter into such arrangements.

Under an agency agreement, a manufacturer or wholesaler remits tax on its sales to distributors, based upon the suggested retail price of the items sold by its distributors. Distributors participating in this type of arrangement are not required to register with the Department, file returns or remit tax because those obligations are assumed by the manufacturer or wholesaler. Consequently, when wholesalers or manufacturers enter into agency agreements with the Department, they become retailers subject to Retailers' Occupation Tax, and are the entities to which the Department will look for payment of the tax.

When your client assumed responsibility for the collection of tax from its distributors, it assumed total responsibility for all taxes, state and local.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk  
Enc.